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**COMMONWEALTH EDISON COMPANY )  
)  
Petition for Expedited Approval of Implementation of )  
A Market-Based Alternative Tariff, To Become )  
Effective On or Before May 1, 2000, Pursuant to )  
Article IX and Section 16-112 of the Public Utilities Act )**

CHIEF CLERK'S OFFICE

**Docket No. 00-0259**

**COMMENTS OF THE CITY OF CHICAGO**

The City of Chicago ("City"), by its attorney, Mara S. Georges, Corporation Counsel, pursuant to the Notice of Hearing Examiner's Scheduling Ruling, issued April 13, 2000, submits its Comments in the above-captioned proceeding.

These Comments are submitted as part of a dramatically expedited process defined by an order of the Hearing Examiner. Edison's proposed schedule and the one ordered by the examiner, to the extent that it mirrors Edison's, have been the subject of a continuing debate about the constitutional and statutory adequacy of the abbreviated timeline. The City shares many of the concerns that have expressed about the schedule and the procedure established for this case. Some of those procedural issues are discussed in these Comments before the City addresses other, more substantive matters that warrant the Commission's attention.

## **Procedural Concerns**

### **A. The Schedule Precludes Development Of A Record That Meets the Objectives of the Commission's Rules of Practice**

The approved schedule for intervenor participation puts the substantive outcome of this proceeding at risk, and that result may ultimately harm the competitive market and retail customers whose interests the proposal ostensibly seeks to advance. Procedurally, the approved schedule is inconsistent with the Commission's stated goal of assembling "a complete factual record to serve as basis for a correct and legally sustainable decision." 83 Ill. Adm. Code 200.25.

The expedited schedule was prompted mainly by Edison's request for approval to implement its proposal by May 1, 2000. That request was made as part of Edison's original filing with the Commission. Yet, Edison did not provide with that filing the backup data or work papers that would reasonably be requested by interested parties and the Commission Staff as part of discovery -- discovery precluded by the schedule that Edison proposed.

The schedule approved by the Hearing Examiner similarly fails to provide even a brief amount of time for discovery and analysis of relevant supporting (or inconsistent) material that Edison possesses and likely reviewed in formulating its proposal. More important, beyond the lack of meaningful discovery and preparation, the schedule provides no meaningful opportunities for:

- ☐ cross-examination on a novel, complex market index proposal;
- ☐ development or presentation of opposing factual and analytical testimony; or
- ☐ formulation of modifications or alternatives on the basis of evidence of record.

Moreover, parties are also denied real opportunities -- both in terms of time and the number of briefs permitted -- to argue the facts of record or to apply relevant legal mandates.

B. There Are Legitimate Concerns About A Hasty Commission Decision

As proposed by Edison, and as the Hearing Examiner's schedule dictates, the proposal before the Commission is essentially a "take it or leave it" proposition. There is no time to develop a record to support modifications or alternative approaches that Edison has not accepted in its filing. With a record consisting only of unvetted testimony by Edison employees, the Commission will not get a balanced and complete record. Even with comments filed by other interested parties, the absence of any opportunity to inquire into the bases for Edison's proposal or to challenge the accuracy and completeness of the supporting testimony precludes development of a full, fair record for the Commission's consideration.

In proceedings considering matters of general policy or rules of general application, the City has supported efficient notice and comment procedures. However, this proceeding presents a specific tariff proposal, applicable to a single utility, and based on disputed or entirely unknown (and in all cases unexamined) factual premises. In these circumstances, it is not reasonable for the Commission to make a determination respecting Edison's novel, untested process without development of a fuller record. A fairer process would permit discovery, cross-examination, and a meaningful opportunity to present opposing or modifying views.

Criticism of the neutral fact finder (NFF) process has been vigorous since its initial implementation. That criticism has increased over time, with even the Commission commenting

recently on the competitive problems created by inaccurate PPO prices determined by the NFF.<sup>1</sup> In this environment, there is a danger that the described procedural deficiencies will combine with a perceived policy imperative to improve the current price setting process to the detriment of ratepayers.

Should the long-standing, near-universal criticism of NFF prices prompt approval of an alternative that may be “better” than the properly criticized NFF process, but still not “just and reasonable” under Article IX of the Public Utilities Act (PUA),<sup>2</sup> then Illinois electric service competition and Illinois electric customers will suffer -- possibly for the duration of the statutory transition period. 220 ILCS 5/16-102. If the Commission approves a market index proposal, it is readily conceivable that needed refinements could be delayed or stymied by arguments that whatever deficiencies it exhibits will cure themselves if given time -- while the market develops, as more transactions are completed, as customers become more familiar with its operation. The reality is that whatever index process the Commission approves is likely to be in place for years. That prospect alone warrants care and deliberation in the Commission’s actions.

The City understands that Edison’s efforts to forge a consensus on the issues raised by its market index proposal took time to conduct. However, eleventh hour, informal, extra-record bases for such a novel, complex proposal are not sufficient to displace the need for a record of

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<sup>1</sup> Assessment of Competition In the Illinois Electric Industry Three Months Following The Initiation of Restructuring (Jan, 2000) at 15. Those difficulties were further explained by customers and competitive providers in a series of discussions led by the Chairman of the Commission. Report of Chairman’s Roundtable Discussions (Re: Implementation of the Electric Service and Rate Relief Law of 1997) at 13-20.

<sup>2</sup> 220 ILCS 5/9-101, *et seq.*

evidence (from all sides) that has been subjected to cross-examination, supplemented by record based briefs.

## **Substantive Issues**

### **C. Edison's Market Index Proposal Raises Significant Article IX Issues**

Edison's current proposal retains many of the deficiencies of the index proposal that Edison proposed and the Commission rejected last year. Like its predecessor, the current proposal is based more on the anticipation of a functioning, efficient market than on the existence of such a market. And, it suffers from a dearth of actual sales transactions on which to base an index.

The proposed process for determining retail customer prices has few meaningful data points -- *i.e.*, completed sales by suppliers to comparable (retail) customers. In fact, the planned use primarily of data on unconsummated sales in Edison's proposal raises a new issue. Edison's proposed reliance on a bid/offer data set assures that the PPO market index price will not reflect actual market prices, but mainly prices that have been rejected in the market. Edison has presented no evidence that demonstrates a meaningful correlation between such bids or offers and the prices at which sales were actually concluded.

Finally, the proposal ignores the fundamental issue raised by critics of the NFF process. There is no attempt to address the fact that bids and offers by wholesale suppliers and buyers are used to determine prices for retail customers. The distinction between the wholesale and retail markets has been recognized even by utility representatives in roundtable discussions of the

Commission's Electric Policy Committee. The failure to address this issue in a proposal that is intended to cure the ills of the NFF process cannot be lightly dismissed.

There is concern that in the context of a hurried proceeding, an additional year of complaints about the NFF process and the broader recognition of the NFF process' flaws may impel the Commission to act favorably this year on a proposal that would have been (and essentially was) rejected last year. In reviewing Edison's proposed replacement for the NFF process, the Commission must apply Article IX's just and reasonable standard. *See*, Edison Petition at 1, and 220 ILCS §16-112(a).

D. The Proposal Likely Contains A Hidden Revenue Increase

The statutory CTC formula was formulated for levelized rates that do not have a significant summer-winter differential. When the CTC calculation formula is applied to prices with significant summer-winter differences, it increases winter CTC charges while decreasing summer CTC charges. However, the PUA also bars payment of negative CTC charges. Thus, winter CTC increases may not be balanced by offsetting (negative) summer CTC charges.

Because of the statutory prohibition on negative CTC charges, and because no tariffed business rate exceeds 10¢/kWh -- a level that summer market prices might reasonably be expected to exceed -- Edison's proposal is not likely to be revenue neutral with respect to CTC collections or total revenues. Focusing on just the structure of Edison's proposal -- *i.e.*, assuming the same annual usage and the same revenue difference between bundled service and competitive supply service for affected CTC customer groups -- Edison will not collect less than it does under the NFF procedure. But, because a negative CTC that might otherwise result from high summer

prices is not permitted by statute, the utility's CTC collections can exceed its previously calculated "lost revenue." Thus, Edison will over-collect the amount otherwise calculated for CTC charges.

If the proposed PPO-MI becomes the only PPO offering to Edison customers, the utility is likely to realize an increase in total collections from CTC charges and total revenues. Should revenue neutrality under this proposal depend on the serendipitous occurrence of precisely the "right" market price index values? Can the Commission find that the proposal is just and reasonable if it produces CTC revenues in accord with statutory requirements only in the unlikely event that the summertime market price index values never exceed bundled service base rates? Since Edison has proposed no adjustment in its calculation of CTC charges to take account of this effect, is the Commission being asked to approve a revenue increase?

With payment of negative CTC charges, the difference between bundled service revenues and PPO-NFF revenues is approximates or equals the statutory mitigation factor. With a \$0.00 floor under the CTC charge and no payment of offsetting summertime CTC charges, customers pay more and Edison collects more in revenues.

E. The Proposal May Not Have the Desired Effect on Competition

The unavailability of “negative CTC” pay-outs at summertime price levels means that customers may (a) face increased total annual CTC charge payments and (b) have their savings from choosing competitive power and energy reduced. Unless customers believe that summer prices will not exceed bundled service base rates or that their savings from lower winter market prices will more than offset the increased CTC and energy charges of summer, they will have no greater incentive than they have under PPO-NFF to choose competitive suppliers. Stated in extreme terms, Edison’s proposal may simply substitute one market distortion (over-collection of “lost revenue” CTC charges based on rejected wholesale commodity prices) for another (PPO-NFF retail prices based on a few wholesale contracts), with no effective reduction of the economic barriers to customer choice.

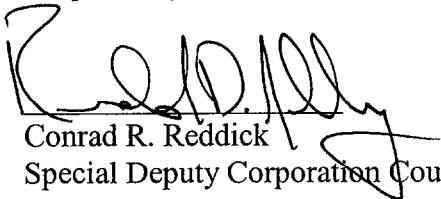
If the scenario illustrated in the attachment to these Comments is plausible, Commission approval of Edison’s proposal may be neither just nor reasonable and not in the public interest. Other approaches to improving the determination of PPO market prices may be equally or more desirable. Could clearer direction to the NFF and a plain statement of the objective of the NFF process -- a market price that is to be used as a surrogate power and energy price for DST (retail) customers-- improve the results obtained through the existing process? Do cost and profit levels for bundled services defined by the DST tariffs enable the NFF to make more effective use of bundled service contracts than in prior years?



As to these and other questions related more directly to Edison's proposal, on the record developed under the expedited schedule ordered in this proceeding, the Commission cannot know.

Dated: April 18, 2000

Respectfully submitted,



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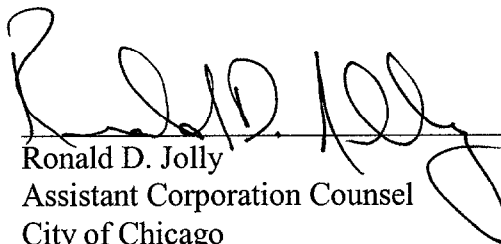
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to Article IX and Section 16-112 of the	)	
Public Utilities Act.	)	

**NOTICE OF FILING**

To: Attached Service List

Please take notice that on this date I caused to be sent to Donna M. Caton, Chief Clerk, Illinois Commerce Commission, 527 East Capitol Avenue, P.O. Box 19280, Springfield, Illinois 62794-9280, by Federal Express, the original and eleven (11) copies of the Comments of the City of Chicago in the above-captioned docket.

Dated: April 20, 2000

  
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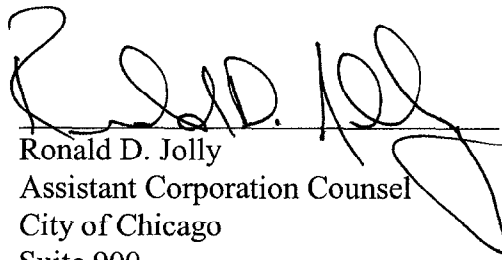
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**CERTIFICATE OF SERVICE**

I, Ronald D. Jolly, hereby certify that a copy of the Comments of the City of Chicago in the above-captioned docket was served upon the party or parties listed in the attached service list, by hand-delivery, by express mail, or by first class mail, postage prepaid, in accordance with the Rules of Practice of the Illinois Commerce Commission.

Dated: April 20, 2000

  
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